



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,301	01/23/2004	Alban Couturier	Q79399	4631
23373 7590 06/09/2008				
SUGHRUE MION, PLLC				
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800				
WASHINGTON, DC 20037				
EXAMINER				
HOM, SHUCK C				
ART UNIT		PAPER NUMBER		
2616				
MAIL DATE		DELIVERY MODE		
06/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/762,301

Applicant(s)

COUTURIER, ALBAN

Examiner

SHICK C. HOM

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 1,2 and 5-24 is/are allowed.
6) ☒ Claim(s) 25-29 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 3/6/08 & 10/5/07 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/003)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/7/08 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claim 25 have been considered but are moot in view of the new ground(s) of rejection.

Specification

3. The disclosure is objected to because of the following informalities: in page 3 line 1 of the substitute specification submitted 10/5/07 whereby the paragraph number after [8] has been re-numbered as [02] is confusing and not clear; because it

Art Unit: 2616

seems that it should be [09]. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Love et al. (6,738,355) in view of Takeda (2002/0055999).

Regarding claims 25 and 29:

Love et al. disclose a measuring probe, comprising: means for accessing data flows composed of packets, transmitted along a path formed by a multiplicity of equipment in a telecommunication network, said data flows passing through said measuring probe (col. 5 line 56 to col. 6 line 7 recite the measurement probe in the communications networks accessing

Art Unit: 2616

traffic flows of packets between nodes without interfering with the normal traffic flow clearly anticipate the measuring probing including means for accessing data flows in a telecommunication network);

measurement means for performing measurements, in accordance with configuration data; determination means for determining that one or more packets transmitted along the said path form a signaling message (col. 4 lines 17-36 recite performing measurement in accordance with an event trigger, i.e. a "start hash mask," derived from observations of normal traffic data clearly anticipate the determination means for determining weather packets transmitted along the path form a signaling message, i.e. event trigger).

Regarding claim 26:

Love et al. disclose wherein said signaling message triggers an establishment of a new measurement task (the abstract and col. 4 lines 17-24 recite collected packets using a start mask whereby the start mask triggers the beginning of data packet collection by measurement probes of the monitoring system).

Love et al. disclose all the subject matter of the claimed invention with the exception of a signaling means for determining said configuration data from said signaling message

wherein said determining comprises reading a specific label, contained in said one or more packets, and determining whether said one or more packets are a signaling message from this specific label as in claims 1 and 15; and wherein said signaling message triggers a modification of a measurement task; and a deletion of a measurement task as in claims 27-28.

Takeda from the same or similar fields of endeavor teach that it is known to provide the signaling means for determining said configuration data from said signaling message wherein said determining comprises reading a specific label, contained in said one or more packets, and determining whether said one or more packets are a signaling message from this specific label (the abstract and paragraph 0022 recite a system for measuring QoS based on difference between time stamps of the source and destination address whereby at a node the destination is determined by referring to a preset network configuration data using MPLS (multiprotocol label switching) by determining whether an outflow block of data captured at the egress is identical to the inflow block of data by comparing feature data of the outflow block of data with that of the inflow block of data so that when they match, QoS information for that block of data provided by the network can be computed clearly anticipate determining configuration data from signaling message wherein

determining comprises reading a specific label as in claims 1 and 15); and wherein said signaling message triggers a modification of a measurement task; and a deletion of a measurement task (paragraph 0082 recite using signaling message to find patching pair and depending upon weather pair is found or not the task is changed, i.e. modified or deleted).

Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide signaling means for determining said configuration data from said signaling message wherein said determining comprises reading a specific label, contained in said one or more packets, and determining whether said one or more packets are a signaling message from this specific label; and wherein said signaling message triggers a modification of a measurement task; and a deletion of a measurement task as taught by Takeda in the communications network measuring probe of Love et al.

The signaling means for determining said configuration data from said signaling message wherein said determining comprises reading a specific label, contained in said one or more packets, and determining whether said one or more packets are a signaling message from this specific label can be implemented by using the technique of referring to configuration data using MPLS (multiprotocol label switching) of Takeda in the determination

Art Unit: 2616

means for determining packets transmitted form a signaling message of Love et al. The motivation for using the technique of referring to configuration data using MPLS as taught by Takeda in the signaling message determination means of the communication network measuring probe of Love et al. being that it provides more efficiency for the system since the system can switch packet with much greater speed with MPLS and the desirable added feature of using the "label" in the packet header for measuring quality of service QoS at the node.

Allowable Subject Matter

6. Claims 1-2 and 5-24 are allowed.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Love et al. (6,904,020) disclose a system and method for monitoring communication networks using data stream characterization. Engel et al. disclose a system and method for selective distribution of measurement device configuration in a loosely coupled autonomous system.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHICK C. HOM whose telephone number is (571)272-3173. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pham Chi can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/762,301

Page 9

Art Unit: 2616

SH

/Chi H Pham/

Supervisory Patent Examiner, Art Unit 2616

6/6/08